

REMARKS

Claims 1, 2, 12 and 14 are amended and claims 24-48 are cancelled herein without prejudice or disclaimer. New claims 49-54 are added. Claims 1-23 and 49-54 are pending in the application. No new matter is added by the present Amendment. Re-examination and reconsideration of the application, as amended, are requested.

Claims 1-23 were examined and claims 24-48 were withdrawn as directed to a nonelected invention. Withdrawn claims 24-48 are cancelled herein without prejudice or disclaimer and with reservation of all rights to seek patent protection for the subject matter of those claims in a further patent application, such as a Divisional or Continuation application.

An objection to claim 14 was raised as lacking antecedent basis for "the analyte." In response, claim 14 is amended herein to be dependent upon claim 12, which provides appropriate antecedent basis for the analyte. Applicant requests that the objection to claim 14 be withdrawn, in view of the amendment to that claim.

Claims 1-11 and 14-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Barry (U.S. Patent Application Publication No. 2002/0077592 A1). This rejection is respectfully traversed, in view of the claims as amended herein and the following remarks.

In particular, claim 1, as amended herein, recites a method that is neither described nor suggested by Barry. As amended, claim 1 recites a method for mitigating restenosis at a trauma site at which a stent is located within the vasculature. The method comprises positioning a catheter adjacent the trauma site, extending a sensor through a lumen in the catheter and through the stent, and delivering a restenosis mitigating drug to the trauma site through the catheter. In contrast, Barry neither describes nor suggests a method having all of the features as claimed. Barry neither describes nor suggests extending a sensor through a lumen in a catheter and through a stent, in combination with positioning the catheter adjacent a trauma site and delivering a restenosis mitigating drug to the trauma site through the catheter. Accordingly, the rejection of claim 1 as being anticipated by Barry is respectfully traversed.

Claims 2-11 and 14-23 are dependent (directly or indirectly) on claim 1, the rejection of claims 2-11 and 14-23 is respectfully traversed, at least for reasons as discussed above with respect to the traversal of the rejection of claim 1.

Claims 4 and 12-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Silver (U.S. Patent No. 6,442,413). This rejection is respectfully traversed, in view of the claims as amended herein and the following remarks.

In particular, each of claims 4, 12 and 13 are dependent (directly or indirectly) on claim 1. Claim 1, as amended herein, (and, thus, dependent claims 4, 12 and 13) recites a method that is neither described nor suggested by Silver.

As noted above, amended claim 1 recites a method for mitigating restenosis at a trauma site at which a stent is located within the vasculature. The method comprises positioning a catheter adjacent the trauma site, extending a sensor through a lumen in the catheter and through the stent, and delivering a restenosis mitigating drug to the trauma site through the catheter. In contrast, Silver describes an expandable sensor device 10 that is comprised of a stent 14 and a sensor 20. (Silver patent, col. 9, ll. 41-42.) Because Silver's sensor 20 is mounted on the stent 14, itself, Silver neither discloses nor suggests (and teaches away from) a method in which a sensor is extended through a lumen in a catheter and through a stent.

Also, while Silver describes the use of a balloon catheter to implant the sensor device, Silver also describes withdrawing the catheter, once the sensor device is implanted. (Silver patent, col. 19, l. 63 to col. 20, l. 3.) Accordingly, Silver does not describe or suggest a method in which a restenosis mitigating drug is delivered to the trauma site through the catheter and a sensor is extended through a lumen in that catheter. Instead, Silver describes using the sensor output to control a conventional external or implanted pump, which, traditionally, would be connected to a conventional delivery site on the patient. Silver provides no teaching or suggestion of delivering a restenosis mitigating drug through a catheter to the trauma site and extending a sensor through that catheter and through a stent at the trauma site. In that regard, Silver neither describes nor suggests the method recited in claim 1 (or dependent claims 4, 12 and 13). The rejection of claims 4, 12 and 13 over Silver is, therefore, respectfully traversed.

Claims 4 and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barry.

Claims 4 and 19-23 are dependent (directly or indirectly) on claim 1. The rejection of claims 4 and 19-23 is respectfully traversed, at least for reasons as discussed above with respect to the traversal of the rejection of claim 1.

New claims 49-54 are added to further protect the presently claimed invention. Each of new claims 49-51 is supported by the original application, including Fig. 1 and the description of the structure of Fig. 1. New claims 49-54 are believed to be further distinguished over the cited references, including the Barry patent application and the Silver patent described above. For example, new claim 49 is dependent on claim 1 and recites that extending a sensor through a lumen in the catheter and through the stent comprises extending the sensor to position at which a sensing element of the sensor is located on one side of and spaced from the stent. Because Silver describes a sensor 20 that is attached to a stent 14, the sensor 20 could not be extended through the stent to a position at which a sensing element of the sensor is located on one side of and spaced from the stent. By attaching the sensor 20 to the stent 14, Silver teaches away from the method recited in new claim 49.

Also, new claim 50 is also dependent on claim 1 and recites that the catheter includes an outlet for delivering the restenosis mitigating drug and further recites that delivering a restenosis mitigating drug comprises positioning the catheter relative to the stent so that the outlet on the catheter is located on the opposite side of the stent relative to the side of the stent at which the sensing element is located. In addition, new claim 51 is dependent on claim 1 and recites that the catheter includes an outlet for delivering the restenosis mitigating drug and that delivering a restenosis mitigating drug comprises positioning the catheter relative to the stent so that the stent is located between the outlet and a sensing element of the sensor. Neither Barry nor Silver teach or suggest a method as recited in either of claims 50 or 51.

New claim 52 is distinguished over the references of record at least for reasons as discussed above with respect to claim 1. New claims 53 and 54 are dependent on new claim 52 and are distinguished over the references of record at least for reasons as discussed above with respect to claims 49-52.

In view of the foregoing, it is respectfully submitted that the application (including each of the pending claims 1-23 and 49-54) is in condition for allowance. Each of the above-discussed rejections of those claims is traversed herein. Allowance of the application on an expedited basis is requested.

If the Examiner considers the application other than in condition for allowance, the Examiner is requested to contact the undersigned attorney at the Los Angeles telephone number (310) 975-7963, to discuss any steps needed to place the application in condition for allowance.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-0872.

Date: October 19, 2006
FOLEY & LARDNER LLP
Customer Number: 23392
Telephone: (310) 975-7963
Facsimile: (310) 557-8475

Respectfully submitted,

By: 

Ted R. Rittmaster
Attorney for Applicant
Registration No. 32,933